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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Beehive Telephone Company, Inc. )

Beehive Telephone, Inc. Nevada )

CC Docket No. 97-237

Transmittal No. 6

Tariff F.C.C. No. 1

REBUTTAL TO OPPOSITION TO DIRECT CASE

Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively, "Beehive"), by their attorney, hereby submit their rebuttal to the Opposition to Direct Case of Beehive Telephone Company ("Opposition") filed by AT&T Corp. ("AT&T") in the above-captioned proceeding.

I

AT&T goes so far as to claim that Beehive "abused the Commission's access filing process . . . by submitting incomplete, unsupported and late-filed data." Opposition at 5. That claim is groundless and legally untenable.

The Commission considers an abuse of process to be "any action designed or intended to manipulate or take improper advantage of Commission process . . . in order to achieve a result which that process . . . was not designed or intended to achieve." *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Process*, 2 FCC Rcd 5563, 5563 (1987). AT&T did not proffer any evidence suggesting that Beehive intentionally used any process for an improper ulterior purpose.

Beehive acknowledges that it did not file a complete direct case on the filing deadline imposed by the Common Carrier Bureau

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ENCLOSURE

CCB

("Bureau"). However, Beehive did not act purposefully, and it certainly did not make "a transparent attempt to grant itself [an] extension of time" as AT&T alleged. Opposition at 3. The fact of the matter is that Beehive was not given adequate time to put forward its best case.

Beehive notes for the record that the Bureau instituted its investigation on August 5, 1997 <sup>1/</sup>, but did not adopt an order designating the issue to be investigated until December 2, 1997. <sup>2/</sup> Moreover, that order was not released to the public until December 3, 1997. Thus, when the Commission was given five months (until January 6, 1997) to issue a final order concluding this investigation, see 47 U.S.C. § 204(a)(2)(A), the Bureau took nearly four months to give notice of the issue to be decided and to establish a filing schedule. That left thirty-five days for the parties to present their cases and for the Commission to issue its decision.

The Bureau intended to give Beehive only nine days to submit its direct case, but it later extended the deadline by a single business day. Thus, Beehive ultimately was given twelve days to present its case. That was less than half the time the Bureau allowed for the preparation of direct cases in past access tariff

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<sup>1/</sup> See *Beehive Telephone Co., Inc.*, DA 97-1674, at 1 (Com Car. Bur. Aug. 5, 1997) ("*Suspension Order*").

<sup>2/</sup> See *Beehive Telephone Co., Inc.*, CC Docket No. 97-237, 1997 WL 741836, at \*1 (Com. Car. Bur. Dec. 2, 1997) ("*Designation Order*").

investigations.<sup>3/</sup> And the Bureau's treatment of Beehive contrasts sharply with the recently completed investigation of the 1997 annual access tariff filings of twenty other local exchange carriers ("LECs"). Even under the press of the Commission's five-month statutory deadline, those LECs were given 30 days to file their direct cases. See *1997 Annual Access Tariff Filings*, CC Docket No. 97-149, 1997 WL 419803, at \*55 (Com. Car. Bur. July 28, 1997).

The Bureau's practice in access tariff investigations evidences its recognition that it takes a LEC approximately 30 days to put together a direct case. In light of that, it was unrealistic (and unfair) for the Bureau to expect Beehive to produce a comprehensive direct case in just twelve days, especially after Beehive informed the staff that it needed at least fifteen days. See *Motion for Extension of Time* at 4 (Dec. 9, 1997).

Beehive's consultants, Cathey, Hutton & Associates, Inc. ("Cathey Hutton"), were only able to prepare three Armis reports within the time allotted. And those reports were faxed to the undersigned counsel by Cathey Hutton just twenty-two minutes before the Bureau's deadline. In the rush to meet that deadline, counsel failed to note that two pages of the reports had been lost in transmission. AT&T was notified of the error and the missing pages were

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<sup>3/</sup> See *1993 Annual Access Tariff Filings*, 8 FCC Rcd 4960, 4973 (Com. Car. Bur. 1993) (34 days); *1992 Annual Access Tariff Filings*, 7 FCC Rcd 4731, 4756 (Com. Car. Bur. 1992) (35 days); *Annual 1990 Access Tariff Filings*, 5 FCC Rcd 4177, 4231 (Com. Car. Bur. 1990) (25 days).

provided the following day. See Letter of Russell D. Lukas to Magalie Roman Salas (Dec. 16, 1997).

After receiving guidance from the staff, Cathey Hutton completed the combined 1995 and 1996 Armis report two days after the Bureau's deadline. That report was immediately submitted to the Commission along with a calculation of Beehive's DEM minutes by jurisdiction. See Supplement to Direct Case (Dec. 17, 1997). <sup>4/</sup>

The forgoing rebuts AT&T's unwarranted claim that Beehive "blatantly disregarded" the Bureau's directives. See Opposition at 5. Beehive tried to comply with those directives. It simply could not do so in time to meet the Bureau's deadline. <sup>5/</sup>

## II

AT&T makes much of the fact that Beehive did not file back-up data to support its costs for the years 1994, 1995 and 1996. See Opposition at 3, 6. However, Beehive was not directed to provide back-up data. Paragraph 7 of the *Designation Order* expressly provided that Beehive was to file "detailed cost data . . . in the format described in the next paragraph." *Designation Order* at 4. Paragraph 8 contained the directive that Beehive was to "complete Table 1 of FCC Armis Report 43-01 . . . for calendar years 1994, 1995 and 1996" and to "submit in this form all accounting data and

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<sup>4/</sup> The information was filed with the Commission 29 minutes after counsel received the material from Cathey Hutton.

<sup>5/</sup> AT&T erroneously states that the undersigned is a member of Beehive's Board of Directors. See Opposition at 5 n.8. Counsel served on the Beehive board on an interim basis for a very brief time in 1995. He has not been a Director of Beehive since he resigned from the board in September 1995.

any additional information necessary to calculate [its] revenue requirement[s]". *Id.* (emphasis added). That is what Beehive did.

Beehive believes that it supplied the detailed cost data requested by the Bureau, and that it did so in the format specified by the staff. Nevertheless, Beehive is submitting bound copies of the workpapers compiled by Cathey Hutton that support Beehive's direct case and its recent *Access Charge Reform* tariff filing.<sup>6/</sup> That material is incorporated herein by reference as part of Beehive's rebuttal case.

### III

AT&T complains that Beehive failed to explain why demand for its switched access services has changed since 1994. See Opposition at 6. However, Beehive explained the reasons for the increase in demand on the record in this case and in other proceedings before the Commission. See, e.g., Reply to Petition to Suspend and Investigate and For Rejection at 5-6, 7-8 (Aug. 4, 1997). Nevertheless, Beehive will repeat its explanation for sake of a complete record.

Beehive is a small telephone company serving two counties in eastern Nevada and parts of seven Utah counties. It operates twelve exchanges in tiny villages scattered throughout its service area -- a land mass comparable to the area stretching from Boston to Washington, D.C. Beehive has installed twelve digital switches and

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<sup>6/</sup> *Access Charge Reform*, 7 Com. Reg. (P&F) 1209, *reconsidered*, 12 FCC Rcd 10119, *stay denied*, 8 Com. Reg. (P&F) 514, *reconsidered*, FCC 97-368 (1997).

over 600 miles of fiber and microwave lines. It has 882 access lines.

Beehive was founded in 1965 by Arthur W. Brothers to bring telephones to Utah's unserved areas. For years, Mr. Brothers served as one-man telephone company (he hired his first full-time employee in 1980). He brought telephone service to remote and sparsely-populated areas using surplus equipment (often by draping old military communications cables along roadside barbed-wire fences). In its first twenty years, Beehive never turned a profit, and Mr. Brothers never drew more than \$5,000 a year from the company.

The efforts of Mr. Brothers to provide telephone service to remote areas no other company would serve has been recognized in the national media since the early 1980s. See, e.g., Kather Christensen, *In Utah Hinderlands, 'An Old Westerner' Is Talk Of the Towns*, Wall St. J., Jan. 6, 1981, at A1.<sup>2/</sup> His efforts have been praised by federal and state regulators. Indeed, in a March 1995 speech in Houston, Texas, then Commission Chairman Alfred C. Sikes noted that "...Utah's diminutive Beehive Telephone Company offers residents in Grouse Creek Utah advanced and feature-rich communications that rival any offered in the world."<sup>8/</sup>

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<sup>2/</sup> Mr. Brothers was the subject of the NBC feature "In Pursuit of the American Dream" which aired on the Today Show on January 14, 1982. The video of the feature is available from the undersigned counsel.

<sup>8/</sup> In October 1995, the Utah Educational Association congratulated Beehive for providing free transport to enable schools in the western desert of Utah to have top quality educational television facilities (using 250 miles of fiber optic cable terminating adjacent to the schools).

In 1993, after conferring with the staff of the Bureau, Beehive commissioned Cathey Hutton to conduct a cost study to enable Beehive to file tariffs that would allow it to continue to operate without the aid of federal and state subsidies. That study, which was based on 1993 cost and demand data, showed that Beehive required a \$.47 per minute rate for interstate access service.

On March 11, 1994, Beehive filed its Interstate Access Tariff F.C.C. No. 1, which included the \$.47 per minute access rate. Between that date and June 23, 1994, Beehive's tariff was reviewed in detail by the Bureau's Tariff Review Branch ("Tariff Branch"). After substantial changes were made in the tariff, the Tariff Branch granted Beehive special permission (No. 94-755) to file the required tariff revisions on less than two days' notice to become effective on July 1, 1994.

AT&T was aware of Beehive's \$.47 a minute access rate in April 1994, but it decided that the traffic originating and terminating within Beehive's service area was too low to justify a challenge to Beehive's access tariff. Therefore, AT&T did not object to the tariff.

More than three months after its access tariff went into effect, Beehive entered into an arrangement with Joy Enterprises, Inc. ("JEI"), under which JEI provides conference bridge services, including a chat line, within Beehive's service area. As a result, Beehive's interstate usage increased substantially in the last quarter of 1994 and totalled 3,328,646 minutes for the year.

A family dispute resulted in the ouster of Mr. Brothers from Beehive's management in late May 1995. The new management retained GVNW Inc. ("GVNW") to prepare Beehive's 1995 annual access tariff filing. GVNW used 1994 cost and demand data to produce Beehive's revenue requirements. Because 1994 revenue data was unavailable, GVNW relied on information provided by NECA and data from cost studies done by Cathey Hutton. The rates developed by GVNW reflected the increase in demand in the fourth quarter of 1994. Therefore, while Beehive's revenue requirements increased from 1993 levels, the increased demand resulted in a 70 percent decrease in Beehive's switched access rates.

On June 2, 1995, Beehive made its 1995 annual access tariff filing, proposing a \$.14 (\$.13582) per minute access rate. AT&T petitioned the Commission to investigate the cost and demand data underlying Beehive's reduced access rate. See *Petition to Suspend and Investigate* at 6 (June 9, 1995). The Bureau denied AT&T's request finding that Beehive's \$.14 access rate was supported by 1994 cost and demand data. See *1995 Annual Access Tariff Filings of Non-Price Cap Carriers*, 10 FCC Rcd 12231, 12242 (Com. Car. Bur. 1995). The new rate became effective on July 1, 1995.

Beehive's interstate usage totalled 25,465,362 minutes in 1995. In 1996, such usage reached 30,120,102 minutes. The increased interstate usage caused Beehive's allocation factor (DEM factor) to reach the cap of .85 in 1995. Beehive's investment and expenses increased from 1994 to 1996 as reflected in Exhibit 2 hereto. The increases in expenses were primarily attributable to the purchase



of fiber optic cable and to the cost of additional switching equipment needed to handle the increased interstate usage. Included in Beehive's increased expenses were the costs it incurred in stimulating interstate usage.

#### IV

As the Bureau found, Beehive erred by not basing its 1997 annual access tariff filing on its total costs of service and related demand for calendar years 1995 and 1996 as required by 47 C.F.R. § 61.39(b)(1)(ii). *See Designation Order* at 3. To correct its error, Cathey Hutton calculated Beehive's July 1, 1997 revenue requirements based on its 1995 and 1996 actual costs, as recently updated by Beehive in the preparation of its annual report to the Public Service Commission of Utah. Demand was determined based on interstate access minutes of use as revised by Beehive in the course of the arbitration before the Utah Division of Public Utilities, Utah Department of Commerce which addressed the access minutes disputed by AT&T. The combined 1995 and 1996 revenue requirements and related demand produced the rates ("revised rates") which should have been in Beehive's 1997 annual access filing. The combined 1995 and 1996 data also produced Beehive's access reform-adjusted rates scheduled to become effective January 1, 1998.

Beehive's revised rates are attached as Exhibit 1. The revised premium local switching rate is \$.032707, which is very close to the \$.0324 rate estimated by AT&T. *See Opposition* at 10. Beehive's revised rate was derived by dividing its combined 1995 and 1996

premium local switching revenue requirement (\$1,027,252) by its total 1995 and 1996 premium interstate access minutes (31,407,602).

The following chart depicts Beehive's current access rates that went into effect in August 6, 1997; the revised rates that should have gone into effect on that date ("1997 Pending"); and Beehive's *Access Charge Reform* rates that were filed on December 17, 1997 ("1998 Pending").

Switched Access Service	1997 (\$)	1997 Revised (\$)	1998 Pending (\$)
<u>Premium Local Transport Facility</u> Per Access Minute Per Mile	0.00066	0.000271	0.000533
<u>Premium Local Transport Termination</u> Per Access Minute	0.01815	0.043763	0.026992
<u>Non-Premium Local Transport Facility</u> Per Access Minute Per Mile	0.000299	0.000123	0.000240
<u>Non-Premium Local Transport Termination</u> Per Access Minute	0.00817	0.019694	0.012105
<u>Premium Local Switching</u> Per Access Minute	0.04012	0.032707	0.028252
<u>Non-Premium Local Switching</u> Per Access Minute	0.01805	0.014734	0.012714

As shown above, Beehive should have been charging AT&T at the premium local switching rate of \$0.032707 since August 6, 1997. However, Beehive also has undercharged AT&T from what should have been charged for local transport services. Finally, it should be noted that Beehive's error in developing its current rates will be corrected on January 1, 1998, if its *Access Charge Reform* rates are

allowed to go into effect. Those rates are based on Beehive's cost of service and related demand for the years 1995 and 1996, and the rates are targeted at an 11.25 percent rate of return. Therefore, the Commission need not prescribe future rates under 47 U.S.C. § 205(a).

V

Beehive's revised rates were developed in accordance with 47 C.F.R. § 61.39(b)(1)(ii) and the Bureau's directive in its *Designated Order*. Those rates are fully supported by cost studies and workpapers prepared by Cathey Hutton. Accordingly, the Commission should hold that Beehive's revised rates are just and reasonable, and therefore constitute the lawful rates that Beehive can charge between August 6, 1997 and December 31, 1997. However, that determination does not mean that the Commission must order refunds as a remedy.

Section 204(a)(1) of the Communications Act of 1934, as amended ("Act"), provides that the Commission "may...require [a carrier that has collected an excessive amount] to refund, with interest,...such portion of such charge...as by its decision shall be found not justified." 47 U.S.C. § 204(a)(1). Because the section 204(a)(1) refund remedy is couched in permissive terms, the Commission may exercise its discretion as to whether to require a refund of paid access charges. See *MCI Telecommunications Corp. v. FCC*, 59 F.3d 1407, 1414 (D.C. Cir. 1995). When exercising that discretion, the Commission should consider: (1) whether the LEC's projections were reasonable when made; (2) the actual harm suffered by the rate

payers; (3) changes in the market environment; and (4) any "overriding equitable considerations." *Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1240 (D.C. Cir. 1993). Three of these factors should be considered in this case.

While Beehive erred by not developing its rates based on 1995 and 1996 data, that error was not egregious and the rates produced were not unreasonable. And there is no evidence that Beehive was either negligent or acting in bad faith. Moreover, it appears that the rate payers suffered little harm.

The fact that Beehive's rates caused little harm is evidenced by the fact that neither MCI Telecommunications Corporation ("MCI") nor Sprint Communications Company, L.P. ("Sprint") objected to the rates. *Cf. Communications Satellite Corp.*, 3 FCC Rcd 2643, 2646 (1988). Both had filed complaints with respect to Beehive's 1994 access rates. Apparently, MCI and Sprint were satisfied with the substantial reduction in Beehive's non-premium access rates.

Beehive's premium local switching rate will be in effect less than five months. Any injury AT&T suffered during that brief period was offset by the fact that it was undercharged for local transport services. Consequently, the harm caused AT&T is not of such magnitude as to warrant a refund.

Finally, the Commission must exercise its refund authority in a manner "equitable in the circumstances" of this particular case. *Communications Satellite*, 3 FCC Rcd at 2646 (quoting *Wisconsin Electric Power v. FERC*, 602 F.2d 452, 457 (D.C. Cir. 1979)). Here, the equities militate against a refund order.

The Commission should recognize that Beehive was not cognizant of its high interstate returns. Granted, the Armis reports now show that Beehive's actual booked interstate revenues produced interstate rates of return of 62.6 percent in 1995 and 67.95 percent in 1996.<sup>2/</sup> However, Beehive's access rates certainly did not produce excess cash revenues, primarily because AT&T stopped paying Beehive in July 1995. Nor did Beehive overearn on its overall operations. Its combined annual rate of return for 1996 was 11 percent. Nevertheless, since early 1996, Beehive was willing to work with AT&T to reach an agreement with respect to Beehive's access rates.

Beehive was aware of the Commission's policy of encouraging carriers and their customers to settle disputes over rates. See *US Sprint Communications Co., L.P. v. AT&T Co.*, 9 FCC Rcd 4801, 4804 (1994), *aff'd*, *Sprint Communications Co., L.P. v. FCC*, 76 F.3d 1221 (D.C. Cir. 1996). See also *Brooten v. AT&T Co.*, 12 FCC Rcd 13343, 13351 (Com. Car. Bur. 1997). Beehive was also aware that NECA negotiated access rate disputes. Accordingly, when its access rates

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<sup>2/</sup> AT&T complains that Beehive did not explain "how it could mathematically combine two years of data showing an unlawful rate of return of over 60 percent to arrive at a combined return for the two years of 21 percent". Opposition at 8. Beehive submitted a combined Armis report for 1995 and 1996 in response to the directive that it show its "July 1, 1997 revenue requirement based on [its] 1995 and 1996 actual costs." *Designation Order* at 4. Cathey Hutton prepared the combined 1995/1996 Armis report after consulting with the staff. The report reflects the combining of the interstate revenue requirements for 1995 and 1996 and the authorized interstate return for those two years of approximately 22.50 percent (11.25 percent times two years). That report was not intended to imply that Beehive had a combined 21 percent return based in its actual booked interstate revenues for 1995 and 1996.

were the subject of formal complaints filed by MCI and Sprint, Beehive was willing to resolve the rate disputes through informal negotiations. Through discussions with the staff of the Bureau's Enforcement Division, Beehive obtained the Bureau's approval to negotiate a reduction in its billed access charges in order to settle the litigation with MCI and Sprint. Settlements were negotiated and MCI and Sprint and their complaints were dismissed with prejudice.<sup>10/</sup> Beehive was willing to take the same approach with AT&T.

During the period that Beehive was controlled by Mr. Brothers' children, AT&T was willing to discuss a comprehensive settlement with Beehive, including the access rate issue. See *infra* Exhibit 2 (Letter of A. L. Tyree to Kenneth Brothers (June 22, 1995)). However, AT&T has steadfastly refused to negotiate with Mr. Brothers. Beginning in February 1996, Mr. Brothers, Cathey Hutton, and the undersigned took turns making unsuccessful attempts to initiate settlement talks with AT&T. The last attempt was made shortly after the *Suspension Order* was released, when a telephone call to AT&T's counsel went unreturned.

Had it been willing to address its concerns informally with Beehive before its 1997 annual access tariff filing was made, AT&T would have had the opportunity to impact the development of Beehive's access rates and to avoid this litigation in the process.


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<sup>10/</sup> See *Sprint Communications Co., L.P.*, 12 FCC Rcd 1383 (Enf. Div. 1997); *MCI Communications Corp. v. Beehive Telephone Co., Inc.*, 11 FCC Rcd 2523 (Enf. Div. 1996).

Moreover, if it had accepted the invitation to negotiate after Beehive's rates went into effect on August 6, 1997, AT&T may have been able to mitigate any damages caused by Beehive's miscalculated premium local switching rate. The Commission should factor AT&T's refusal to negotiate into its refund decision.

Respectfully submitted,

BEEHIVE TELEPHONE COMPANY, INC.  
BEEHIVE TELEPHONE, INC. NEVADA

By   
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Their Attorney

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December 29, 1997

8. Rates and Charges8.1 Switched Access Service8.1.1 Local Transport8.1.1.1 Premium Access

-	<u>Local Transport Facility</u> Per Access Minute Per Mile	\$0.000271
-	<u>Local Transport Termination</u> Per Access Minute	\$0.043763

8.1.1.2 Non-Premium Access

-	<u>Local Transport Facility</u> Per Access Minute Per Mile	\$0.000123
-	<u>Local Transport Termination</u> Per Access Minute	\$0.019694

8.1.2 End Office8.1.2.1 Local SwitchingPremium

Local Switching Per Access Minute (Feature Group C) (including: (1) Feature Group B when utilized for the provision of MTS/WATS service and (2) Feature Groups A & B when utilized for the provision terminating inward WATS and WATS type services at an equal access WATS serving office.)	\$0.032707
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<u>Non-Premium Per Access Minute</u>	\$0.014734
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**BEEHIVE TELEPHONE COMPANY****Exhibit 2**

		<u><b>EXPENSES</b></u>			<u><b>NET INVESTMENT</b></u>		
		<u>Total Company</u>	<u>Switching</u>	<u>Traffic Sensitive</u>	<u>Total Company</u>	<u>Switching</u>	<u>Traffic Sensitive</u>
1994	Nevada	232,052	12,060	54,925	589,147	29,491	160,474
	Utah	1,267,746	132,167	304,548	2,841,558	273,745	646,673
	Total	1,499,798	144,227	359,473	3,430,705	303,236	807,147
1995	Nevada	270,931	28,563	114,156	678,930	65,184	249,174
	Utah	3,335,666	620,503	1,219,264	2,702,432	270,042	651,814
	Total	3,606,597	649,066	1,333,420	3,381,362	335,226	900,988
1996 Original	Nevada	307,318	23,729	67,565	751,736	41,442	165,738
	Utah	3,211,138	775,360	1,294,920	2,880,455	603,815	594,901
	Total	3,518,456	799,089	1,362,485	3,632,191	645,257	760,639
1996 Revised	Nevada	272,439	24,446	66,658	750,054	41,373	165,367
	Utah	2,994,631	539,052	980,696	2,863,219	599,938	585,849
	Total	3,267,070	563,498	1,047,354	3,613,273	641,311	751,216
1996 Unweighted Dem	Nevada	272,439	9,569	72,874	749,780	13,793	165,387
	Utah	2,994,631	488,509	1,010,101	2,862,519	521,362	586,824
	Total	3,267,070	498,078	1,082,975	3,612,299	535,155	752,211

6-28-1995 4:57PM

FROM ATT HELENA, MT 436 449 7736

P. 2

Exhibit 3



A. L. (Lee) Tyree  
Director

795 Folsom Street, Room 335  
San Francisco, CA 94107  
Phone (415) 442-2784  
FAX (415) 442-2074

June 22, 1995

Mr. Kenneth Brothers  
Chairman, Beehive Telephone Company  
2274 S. 1300 E. #G8321  
Salt Lake City, UT 84106

Dear Mr. Brothers:

As you are aware, AT&T has several unresolved issues with Beehive Telephone. Significant hours and resources were spent in 1993 by Beehive, their consultant, Cathey, Hutton & Assoc, and AT&T representatives to develop the terms for an agreement. For whatever reason that agreement was never executed by the parties, and AT&T has found it impossible to conduct normal business with Beehive Telephone.

It now appears that there is an opportunity for Beehive Telephone and AT&T to resolve their differences and lay the groundwork for a normal business relationship. The following is a summary of the issues that AT&T feels need to be resolved to reestablish a mutually beneficial business relationship.

1. PAYMENT OF AT&T REVENUES

A Purchase of Accounts Receivable Statement (PARS) is the normal monthly report used to list the categories of revenues that are due to AT&T. The revenue categories are: MTS Directory Assistance, Optional Calling Plans, WATS, Coin, and Taxes. The PARS report must be submitted to AT&T each month to indicate the amount of money that the ICO has billed and collected for AT&T. This report is to be accompanied by a payment to AT&T of the total revenues due.

AT&T records (which go back to 11/88 for Utah and 6/90 for Nevada) show that Beehive submitted monthly PARS Reports to AT&T but did not remit payment for the amount due to AT&T. In addition, (during the period from the Payment Due Date of 7/1/90 to 5/1/92) Beehive frequently submitted their own spreadsheets for Utah and Nevada which contained only two categories of

revenues- MTS and Directory Assistance. Additionally, Beehive added a column for Beehive's Operator Surcharges for InterLATA traffic, then deducted that amount from revenues due to AT&T. Despite the fact that there is no operator services agreement between the two companies and despite the fact that AT&T has specifically asked Beehive not to provide operator services on its behalf, Beehive has netted this operator service surcharge against revenues due AT&T.

Beginning 6/1/92, Beehive stopped deducting the Operator Surcharge. Instead it began to make an MTS adjustment on the PARS report that essentially reflected the operator surcharge it was previously deducting. Similar to the previous Beehive spreadsheets, these PARS reports listed AT&T revenues for MTS and Directory Assistance. However, Beehive included an "MTS adjustment" that they subtracted from the balance due before they paid AT&T. Beehive continued this practice for Utah and Nevada up to 3/1/93.

Beginning 4/1/93, Beehive stopped its practice of taking the "MTS adjustment" on its monthly PARS reports. On 4/26/93, Beehive issued a check to AT&T for \$132,830.53. According to the best information available to AT&T, this amount reflected the PARS balance due AT&T (in Nevada since 6/90 and in Utah since 11/88) less additional MTS adjustments that previously could not be accounted for and additional late payment fees.

In March 1993, AT&T changed the methods and procedures with all Local Exchanges Carriers and discontinued the practice of netting revenues (PARS) to access (CABS). However, Beehive continues to net revenues and operator services, which has resulted in a complete absence of PARS statements or payments.

## 2. BILLING AND COLLECTION CONTRACT

The last Billing and Collection contract that was negotiated between AT&T and Beehive expired on 12/31/92. This contract called for Beehive to bill and collect revenues for AT&T calls and provide the revenues to AT&T on PARS. In turn, AT&T would pay Beehive to perform these functions.

Beehive has continued to bill and collect AT&T calls and revenues in absence of a new Billing and Collection Agreement. AT&T has not paid Beehive for the billing and collection functions since 1/1/93. Because of Beehive's activities described above, AT&T has received very little of the revenue collected during this period.

3. OPERATOR SERVICES

Beehive has been intercepting AT&T's operator services calls in Utah and Nevada since June, 1990, despite many protests by AT&T. AT&T does not have a contract in place with Beehive for the provision of Operator Services and, therefore, these calls should not be intercepted by Beehive nor should AT&T pay Beehive for any operator functions. AT&T's operating procedures require that Beehive route AT&T's Operator Services traffic to Denver over a separate operator trunk group for disposition and handling.

4. ACCESS TARIFFS

On July 1, 1994 Beehive withdrew from the NECA Common Line and Traffic Sensitive pools and then filed its own interstate access tariff that concurred in the NECA tariff in format and terms and conditions, but also included new rates for access rate elements. This filing increased the interstate access rate from \$0.07 per minute to \$0.47 per minute. In addition, Beehive started billing AT&T for terminating attempts in addition to completions. In total, AT&T access expense for providing interexchange telecommunication services to the Beehive area increased by about 800%.

Recently, BTC filed a revision to its interstate access tariff, effectively reducing the price for access to about 14 cents per minute. In its filing BTC indicated that it annualized its current demand to determine rates. AT&T subsequently petitioned to intervene and investigate Beehive's rates subject to an accounting order. Unquestionably, your action is a step in the right direction and AT&T's response is simply a protection of its interests as it relates to what Beehive's final rates should be. With the Joy Communications situation and business relationship still unresolved, this is only prudent. However, it is AT&T's expectation that Beehive will continue to reduce its rates for Interstate and Intrastate access to the point where it reflects the true cost of providing that service. In the long run AT&T believes that rate would approach 1.2 cents per Access Minute of Use.

5. NETWORK FACILITIES

In 1993, AT&T provided 23 trunks into the Wendover tandem. In August 1994 the facilities were expanded by 25 trunks, for a total capacity of two T1 facilities. During the normal busy hours approximately 32 of the 48 trunks are being utilized. However, significant blocking is occurring during the late night-early morning hours on Friday, Saturday and Sunday. The increase in volumes is directly related to the Joy Communications traffic. In an effort to minimize the access expense, no additional AT&T facilities will be provided into the Wendover tandem until AT&T is satisfied that Beehive's access rates are cost-based and that it has not been the victim of any fraudulent activity with regard to the payment of extremely high access charges associated with the Joy Communications terminating traffic.

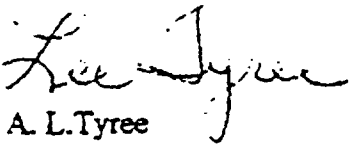
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FROM ATT HELENA, MT 406 449 7736

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AT&T is eager to resolve these issues with Beehive Telephone so that we may begin to develop a normalized, mutually beneficial relationship. Becky Plaggemeyer, of my organization, is the AT&T Manager responsible for working with the Exchange Carriers in Utah, and therefore is most knowledgeable about the Beehive issues. She and I welcome the opportunity to sit down with you and your staff to discuss the development of a comprehensive settlement agreement which addresses all the above issues. Please contact Becky at (406) 449-6777 to discuss a possible meeting date.

Sincerely,



A. L. Tyree  
LEC-IM Director

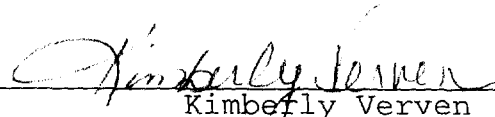
**CERTIFICATE OF SERVICE**

I, Kimberly Verven, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 29th day of December, 1997, sent by first class United States mail, copies of the foregoing REBUTTAL TO OPPOSITION TO DIRECT CASE to the following:

\*James D. Schlichting, Chief  
Competitive Pricing Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N. W., Room 518  
Washington, D. C. 20554

\*Mr. James Lichford  
Ms. Josephine Simmons  
Tariff and Price Analysis Branch  
Federal Communications Commission  
1919 M Street, N. W., Room 518  
Washington, D. C. 20554

Peter Jacoby, Esquire  
Jodie Donovan-May, Esquire  
AT&T  
295 North Maple Avenue, Room 3247G2  
Basking Ridge, New Jersey 07920

  
Kimberly Verven

\*By Hand